

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES RICKS,

Plaintiff,

-against-

P.O. BRIAN O'HANLON SHIELD 10952, 4 to 12 PM,
P.O. JEREMY RODRIGUEZ, SHIELD 24012, 4 to 12
PM, P.O. KEVIN CASEY, SHIELD 3158, DISTRICT
ATTORNEY OFFICE BRONX ROBRET JOHNSON,

Defendants.

**ANSWER TO THE
AMENDED COMPLAINT ON
BEHALF OF DEFENDANTS
POLICE OFFICER
O'HANLON, POLICE
OFFICER RODRIGUEZ AND
DISTRICT ATTORNEY
JOHNSON**

07 CV 9849 (WHP)(JCF)

Jury Trial Demanded

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Defendants Police Officer Brian O'Hanlon, Police Officer Jeremy Rodriguez, and District Attorney Robert Johnson, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the amended complaint, respectfully allege, upon information and belief, as follows:¹

1. Deny the allegations set forth in paragraph "I" of the amended complaint and all of its subparts, except admit that plaintiff purports to name the parties as stated therein.

2. Deny the allegations set forth in paragraph "II.A." of the amended complaint, except admit that plaintiff was criminally prosecuted in Bronx County Supreme Court.

3. Deny the allegations set forth in paragraph "II.B." of the amended complaint, except admit that plaintiff was criminally prosecuted in Bronx County Supreme Court.

¹ In addition to these defendants, the amended complaint purports to name "P.O. Kevin Casey" as a defendant. On information and belief, Officer Casey has not been served with a copy of the summons and amended complaint and is therefore not a defendant in this action.

4. Deny the allegations set forth in paragraph "II.C." of the amended complaint, except admit that plaintiff was arrested on or about June 13, 2006 at approximately 9:30 p.m.

5. Deny the allegations set forth in paragraph "II.D." of the amended complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "III" of the amended complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "IV" of the amended complaint and all of its subparts, except admit that plaintiff was not incarcerated on June 13, 2006 and that plaintiff filed a complaint with the Civilian Complaint Review Board and the Internal Affairs Bureau of the New York City Police Department.

8. Deny the allegations set forth in paragraph "V" of the complaint, except admit that plaintiff purports to seek relief as stated therein.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "VI" of the complaint and all of its subparts.

10. The five-page document plaintiff attaches to the amended complaint entitled "Argument" contains conclusions of law to which no response is required. To the extent this document avers facts to which a response is required, defendants deny such allegations.

11. The letter dated April 9, 2007 labeled "Exhibit (A)" contains no averments of fact to which a response is required. The document speaks for itself.

12. The letter dated June 30, 2006 labeled "Exhibit (B)" contains no averments of fact to which a response is required. The document speaks for itself.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

13. The amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

14. Defendants have not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

15. Defendants O'Hanlon, Rodriguez and Johnson have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

16. At all times relevant to the acts alleged in the amended complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

17. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of the defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

18. As a result of plaintiff's June 13, 2006 arrest, plaintiff pled guilty to the crime of reckless endangerment and is therefore barred from attacking the validity of his conviction in this civil action.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

19. Plaintiff's claims may be barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

20. Plaintiff's claims may be barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

21. Plaintiff's claims may be barred, in whole or in part, by the applicable statute of limitations period.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

22. Defendants O'Hanlon, Rodriguez and Johnson had no personal involvement in the events alleged by plaintiff.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

23. Defendant Bronx County District Attorney Robert Johnson is entitled to absolute immunity.

WHEREFORE, defendants Police Officer O'Hanlon, Police Officer Rodriguez and District Attorney Johnson request judgment dismissing the amended complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 28, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants Officer O'Hanlon, Officer
Rodriguez and District Attorney Johnson
100 Church Street
New York, New York 10007
(212) 788-1575

By: _____ /s/
Bradford C. Patrick
Assistant Corporation Counsel
Special Federal Litigation Division

To: BY MAIL
James Ricks, [REDACTED]
Plaintiff Pro Se
Otis Bantum Correctional Center
1600 Hazen St.
E. Elmhurst, NY 11370

DECLARATION OF SERVICE BY FIRST CLASS MAIL

I, Bradford C. Patrick declare, pursuant to 28 U.S.C. § 1746, under the penalty of perjury that on **July 28, 2008** I served the annexed **Answer to the Amended Complaint on Behalf of Defendants Officer O'Hanlon, Officer Rodriguez and District Attorney Johnson** upon the following individual by depositing a copy of the same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to the said plaintiff pro se at the address set forth herein, being the address designated by said plaintiff for that purpose, to wit:

James Ricks, # [REDACTED]
Plaintiff Pro Se
Otis Bantum Correctional Center
1600 Hazen St.
E. Elmhurst, NY 11370

Dated: New York, NY
 July 28, 2008

/s/
Bradford C. Patrick
Assistant Corporation Counsel
Special Federal Litigation

Index No. 07 CV 9849 (WHP)(JCF)

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SOUTHERN DISTRICT OF NEW YORK

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-against-

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ON BEHALF OF DEFENDANTS POLICE
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JOHNSON**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants Officer O'Hanlon, Officer
Rodriguez and District Attorney Johnson
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Bradford C. Patrick
Tel: (212) 788-1575
NYCLIS No.2008-008502*

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for.....